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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/516,619	05/25/2005	Andreas Bergmann	2582.021	7129
7590	08/10/2007		EXAMINER	
Kathy Smith Dias, Esq. HESLIN ROTHENBERG FARLEY & MESITI P.C. 5 Columbia Circle Albany, NY 12203-5160			WEN, SHARON X	
ART UNIT	PAPER NUMBER	1644		
MAIL DATE	DELIVERY MODE	08/10/2007 PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/516,619	BERGMANN, ANDREAS	
<b>Examiner</b>	<b>Art Unit</b>		
Sharon Wen	1644		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 26 April 2007.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 9-13 is/are pending in the application.
  - 4a) Of the above claim(s) 13 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) \_\_\_\_\_ is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) 9-12 are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

1. The examiner of this application in the PTO has changed. To aid in the correlating any papers for this application, all further correspondence regarding this application should be directed to Sharon Wen, Group Art Unit 1644, Technology Center 1600.

2. Applicant's election without traverse of Group I (claims 9-12) in the reply filed on 04/26/2007 is acknowledged.

Claims 1-8 have been canceled.

Claims 9-13 are currently pending.

Claim 13 has been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Group, there being no allowable generic or linking claim.

3. Upon further consideration, a supplemental species election has been requested as set forth in this Office Action.

The examiner apologizes for any inconvenience to Applicant in this matter.

Claims 9-12 are currently under restriction requirement.

### ***Species Election***

4. This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

A. Applicant is required to elect a specific method for prevention, inhibition and treatment of sepsis in an animal or patient at risk for sepsis comprising:

- i) extracorporeal removal of anti-AG<sub>M1</sub> antibodies and/or anti-G<sub>M1</sub> antibodies from blood by plasmapheresis (reading on claims 9bi and 10-12);
- ii) administration of an agent which binds or blocks anti-AG<sub>M1</sub> antibodies and/or anti-G<sub>M1</sub> antibodies (reading on claims 9bii and 10); **OR**
- iii) administration of antibiotics (reading on claim 9biii).

B. Applicant is further required to elect a specific agent which binds or blocks anti-AG<sub>M1</sub> antibodies and/or anti-G<sub>M1</sub> antibodies for which is used in the elected method (see *supra*) for prevention, inhibition and treatment of sepsis, for example:

- i) gangliosides AG<sub>M1</sub>;
- ii) gangliosides G<sub>M1</sub>; **OR**
- iii) substances which simulate the carbohydrate moiety of said gangliosides.

If (iii), i.e. “substances”, is elected, Applicant is further required to elect an ultimate species of the agent that reads on a substance as disclosed in specification on page 3, e.g. TNF-alpha.

5. The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the stated in the previous Restriction Requirement mailed on 04/02/2007.

In addition, PCT Rule 13.2 defines “special technical features” as “those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.”

Della Valle et al. teach using a therapeutic ganglioside agent for treatment sepsis which can be due to toxic infection causes (U.S. Patent 4,593,091, see entire document, in particular, column 16, lines 23-26). Therefore, the technical feature in the present application does not contribute over prior art thus the unity of invention does not exist.

6. Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

7. Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharon Wen whose telephone number is (571) 270-3064. The examiner can normally be reached on Monday-Thursday, 8:30AM-6:00PM, ALT. Friday, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached on (571)272-0841. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Sharon Wen, Ph.D.  
Patent Examiner  
August 3, 2007

*Phillip Gabel*  
PHILLIP GABEL, PH.D JD  
PRIMARY EXAMINER  
R 1600  
8/6/07